Case Summary

Complaint against Lands Department for delay in handling water seepage problem on a retaining wall

The Complaint

A District Lands Office ("DLO") under the Lands Department ("Lands D") delayed handling the water seepage problem on a retaining wall behind the complainant's house.

The Event

2. In early February 2004, a District Councillor referred a complaint from the complainant to the local District Office ("DO"), alleging that there was water seepage from a retaining wall on Government land behind the complainant's house. DLO also received the complaint in early March.

3. DLO considered the issue outside its jurisdiction. In mid-March, DO requested DLO in writing to check the ownership of the retaining wall and the party responsible for maintenance. It also sought assistance from other departments concerned to follow up the matter.

4. As the cause of the seepage had not been identified and DLO had not replied, DO contacted the relevant departments and coordinated a joint site inspection with the complainant in early September, with a view to solving the problem as quickly as possible. On receiving the notification, DLO joined the inter-departmental inspection and pursued the case again.

5. After the inspection, the departments concerned agreed that DLO should find out who should be responsible for maintenance. Nevertheless, DLO was unable to find any registration records of the retaining wall. DLO, therefore, proposed that DO arrange repair under its Rural Public Works Programme ("RPWP").

6. As the retaining wall was on unleased Government land, DO asked

DLO whether it was an unauthorised structure and should be demolished. DLO indicated inability to confirm it and considered demolition not practicable. DLO, therefore, suggested again that DO arrange repair under its RPWP. However, DO held that maintenance of the retaining wall was not within the scope of RPWP and insisted upon identifying the party responsible for maintenance.

7. Lands D admitted its negligence in not following up the case immediately upon receipt of DO’s memo in March 2004. As regards maintenance responsibility, Lands D believed that the retaining wall was probably built in the 1970’s around the time when the complainant’s house was completed. Meanwhile, Technical Circular No. 26/99 issued by the former Works Bureau stipulates a “beneficiary-maintains” principle. In this light, Lands D considered that if the retaining wall was later found to be dangerous, the owner or beneficiary of that wall should be responsible for maintenance.

Our Observations and Opinions

8. As DLO had failed to take prompt action, on receiving the complaint, to clarify the ownership of the retaining wall and the party responsible for its maintenance, this Office considered DLO lax in performing its duties.

9. Although DLO had twice responded to DO’s enquiries, it indicated only uncertainty of maintenance responsibility, impracticability of demolition and request for DO’s RPWP. The problem dragged on until this Office took up the case. Lands D then confirmed the retaining wall to be on Government land and then advanced the “beneficiary-maintains” principle.

10. However, the Technical Circular cited by Lands D was an internal document issued in 1999. This Office noted that it had apparently not been officially published and the legal basis for such a principle was not explained. The Department should seek clarification to prevent future disputes.

Conclusion

11. In view of the above, The Ombudsman considers the complaint **substantiated**.

Recommendations

12. The Ombudsman urges Lands D to:

(a) instruct its staff to adopt a more proactive attitude in order to avoid causing any delay; and

(b) settle any disputes over the maintenance responsibility for the retaining wall as soon as possible to prevent any accident arising from lack of maintenance.

Response from Lands D

13. Lands D has raised no objection to our investigation report. It has issued a letter to the owner of the house informing him of his responsibility to maintain the retaining wall.

Final Remark

14. This Office will follow up with Lands D on clarification of its legal justification for the "beneficiary-maintains" principle.

Office of The Ombudsman
June 2005